



## Senate

General Assembly

**File No. 639**

February Session, 2016

Substitute Senate Bill No. 468

*Senate, April 14, 2016*

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

### ***AN ACT CONCERNING THE COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (b) of section 46a-84 of the 2016 supplement to  
2 the general statutes is repealed and the following is substituted in lieu  
3 thereof (*Effective October 1, 2016*):

4 (b) [Upon] Except as provided in this section, upon (1) certification  
5 of a complaint filed pursuant to subsection (a) or (b) of section 46a-82,  
6 (2) the filing of a complaint pursuant to subsection (c) of said section,  
7 or (3) a decision to hear a complaint, which is made pursuant to  
8 subsection (e) of section 46a-83, the Chief Human Rights Referee shall  
9 appoint a human rights referee to act as a presiding officer to hear the  
10 complaint. The chief referee shall also appoint an individual  
11 authorized by subsection (e) of this section or a referee, other than the  
12 referee appointed to hear the complaint, to conduct settlement  
13 negotiations. The chief referee shall serve in the name of the  
14 commission a copy of the complaint, as the same may have been

15 amended, requiring the respondent to answer the charges of the  
16 complaint, together with a written notice requiring the respondent to  
17 appear at a hearing or settlement conference at a date and time  
18 specified in the notice. A hearing on a complaint filed pursuant to  
19 subsection (a) or (b) of section 46a-82 shall be commenced by  
20 convening a hearing conference not later than forty-five days after (A)  
21 the certification of the complaint, or (B) the decision made pursuant to  
22 subsection (e) of section 46a-83 to hear the complaint, as applicable.  
23 Such hearing shall be a de novo hearing on the merits of the complaint  
24 and not an appeal of the commission's (i) processing of the complaint  
25 prior to its certification, or (ii) decision made pursuant to subsection (e)  
26 of section 46a-83 to hear the complaint. A hearing on a complaint filed  
27 pursuant to subsection (c) of section 46a-82 shall be commenced by  
28 convening a hearing conference not later than twenty days after the  
29 date of notice of such complaint. [Hearings shall proceed with  
30 reasonable dispatch and be concluded in accordance with the  
31 provisions of section 4-180.]

32 Sec. 2. Section 46a-84 of the 2016 supplement to the general statutes  
33 is amended by adding subsections (h), (i) and (j) as follows (*Effective*  
34 *October 1, 2016*):

35 (NEW) (h) Each party shall be afforded the opportunity to inspect  
36 and copy relevant and material records, papers and documents not in  
37 the possession of the party, except as otherwise provided by applicable  
38 state or federal law. The presiding officer may order a party to produce  
39 such records, papers and documents, and if a party fails to comply  
40 with such order within thirty days of such order, the presiding officer  
41 may issue a nonmonetary order deemed just and appropriate,  
42 including, but not limited to, an order (1) finding that the matters that  
43 are the subject of the order are established in accordance with the claim  
44 of the party requesting such order, (2) prohibiting the party who has  
45 failed to comply with such order from introducing designated matters  
46 into evidence, (3) limiting the participation of the noncomplying party  
47 with regard to issues or facts relating to the order, or (4) drawing an  
48 adverse inference against the noncomplying party.

49 (NEW) (i) Hearings shall proceed with all reasonable speed and be  
50 concluded in accordance with the provisions of this subsection and  
51 section 4-180. The presiding officer shall issue a final decision not later  
52 than eighteen months after the date (1) the complaint is certified  
53 pursuant to subsection (a) of this section, or (2) the decision is made  
54 pursuant to subsection (e) of section 46a-83 to hear the complaint, as  
55 applicable. The commission, the complainant or the respondent may  
56 apply to the superior court for the judicial district of Hartford for an  
57 order requiring the presiding officer to comply with the provisions of  
58 this subsection and section 4-180. The court, after hearing, shall issue  
59 an appropriate order. Not later than January 1, 2017, and annually  
60 thereafter, the Chief Human Rights Referee shall submit a report, in  
61 accordance with the provisions of section 11-4a, to the joint standing  
62 committee of the General Assembly having cognizance of matters  
63 relating to the judiciary on: (A) The number of final decisions in the  
64 previous fiscal year that exceeded the time frame and the reasons for  
65 the failure to comply; and (B) the number of complaints pending final  
66 decision in the previous fiscal year that have exceeded the time frame  
67 and the reasons for the failure to comply.

68 (NEW) (j) The Chief Court Administrator shall designate judge trial  
69 referees who shall be available to the Commission on Human Rights  
70 and Opportunities to act as presiding officers at any hearing or  
71 proceeding of the commission conducted pursuant to this section,  
72 subsection (l) of section 46a-83 or subsection (c) or (d) of section 46a-56.  
73 Any judge trial referee so designated and presiding shall have the  
74 same powers and duties as a human rights referee appointed pursuant  
75 to section 46a-57. Any judge trial referee so designated and presiding  
76 shall be compensated in accordance with the provisions of section 52-  
77 434 from such funds as may be available to the commission. A judge  
78 trial referee may also hear complaints filed under subsection (e) of  
79 section 4-61dd. Whenever the total number of complaints at public  
80 hearings that have not been resolved by final decision pursuant to  
81 section 46a-86 exceeds one hundred, or subsection (e) of section 4-61dd  
82 exceeds one hundred, the executive director of the commission, within  
83 available appropriations, may appoint a judge trial referee designated

84 by the Chief Court Administrator to preside at a settlement conference  
85 or to hear and issue a final decision on a complaint. The executive  
86 director shall make the appointment of a judge trial referee not later  
87 than fifteen days following the date of (1) the certification of the  
88 complaint, or (2) the decision made pursuant to subsection (e) of  
89 section 46a-83 to hear the complaint, as applicable. In lieu of  
90 appointing a judge trial referee to conduct a settlement conference, the  
91 executive director may appoint an individual authorized by subsection  
92 (e) of this section to conduct settlement negotiations. If the executive  
93 director fails to appoint a judge trial referee to preside at a settlement  
94 conference or an individual authorized by subsection (e) of this  
95 subsection to conduct settlement negotiations, the chief human rights  
96 referee, as provided in subsection (b) of this section, shall appoint a  
97 human rights referee to hear the complaint, or a human rights referee  
98 or an individual authorized by subsection (e) of this section to conduct  
99 a settlement conference.

100 Sec. 3. Section 46a-55 of the 2016 supplement to the general statutes  
101 is amended by adding subsections (c) and (d) as follows (*Effective*  
102 *October 1, 2016*):

103 (NEW) (c) The executive director, through the supervising attorney,  
104 may assign a commission legal counsel to represent the interests of the  
105 state in any suit or other proceeding in which civil or human rights are  
106 at issue. Commission legal counsel may intervene as a matter of right  
107 in any such suit or proceeding without permission of the parties, the  
108 presiding officer or the court.

109 (NEW) (d) The executive director, through the supervising attorney,  
110 may, within available appropriations, assign a commission legal  
111 counsel to bring a civil action, in accordance with this subsection, in  
112 lieu of an administrative hearing pursuant to section 46a-83 or 46a-84,  
113 as amended by this act, when the executive director determines that a  
114 civil action is in the public interest. The commission legal counsel shall  
115 bring a civil action in the Superior Court not later than ninety days  
116 following the date the commission legal counsel notifies the parties of

117 the executive director's determination. Such civil action may be served  
118 by certified mail and is not subject to the provisions of section 46a-100,  
119 46a-101 or 46a-102. The jurisdiction of the Superior Court in an action  
120 brought under this subsection shall be limited to such claims,  
121 counterclaims, defenses or the like that could be presented at an  
122 administrative hearing before the commission, had the complaint  
123 remained with the commission for disposition. A complainant may  
124 intervene as a matter of right without permission of the court or the  
125 parties. The civil action shall be tried to the court without a jury. If the  
126 commission legal counsel determines that the interests of the state will  
127 not be adversely affected, the complainant or attorney for the  
128 complainant shall present all or part of the case in support of the  
129 complaint. The court may grant any relief available under section 46a-  
130 104. Where the Superior Court finds that a respondent has committed  
131 a discriminatory practice, the court shall grant the commission its fees  
132 and costs and award the commission a civil penalty, not exceeding ten  
133 thousand dollars, which shall be payable to the commission and used  
134 by the commission to advance the public interest in eliminating  
135 discrimination.

136 Sec. 4. Section 46a-68c of the 2016 supplement to the general statutes  
137 is repealed and the following is substituted in lieu thereof (*Effective*  
138 *October 1, 2016*):

139 In addition to the provisions of section 4a-60, each contractor with  
140 fifty or more employees awarded a public works contract, municipal  
141 public works contract or contract for a quasi-public agency project in  
142 excess of fifty thousand dollars in any fiscal year, but not subject to the  
143 provisions of section 46a-68d, shall develop and file with the  
144 Commission on Human Rights and Opportunities an affirmative  
145 action plan which shall comply with regulations adopted by the  
146 commission. Failure to develop an approved affirmative action plan  
147 pursuant to this section shall act as a bar to bidding on or the award of  
148 future contracts until such requirement has been met. The executive  
149 director or the executive director's designee shall review and formally  
150 approve, conditionally approve or disapprove the content of the

151 affirmative action plan not later than ninety days following the date of  
 152 the submission of the plan to the commission. If the executive director  
 153 or the executive director's designee fails to approve, conditionally  
 154 approve or disapprove a plan within such ninety-day period, the plan  
 155 shall be deemed to be approved. When the [commission] executive  
 156 director or the executive director's designee approves an affirmative  
 157 action plan pursuant to this section, [it] the executive director or the  
 158 executive director's designee shall issue a certificate of compliance to  
 159 the contractor. [This] Such certificate shall be prima facie proof of the  
 160 contractor's eligibility to bid or be awarded contracts for a period of  
 161 two years from the date of the certificate. Such certificate shall not  
 162 excuse the contractor from monitoring by the commission or from the  
 163 reporting and record-keeping requirements of sections 46a-68e and  
 164 46a-68f. The [commission] executive director or the executive director's  
 165 designee may revoke the certificate of a contractor if the contractor  
 166 does not implement its affirmative action plan in compliance with this  
 167 section and sections 4a-60, 4a-60g, 4a-62, 46a-56, 46a-68b, 46a-68d, and  
 168 46a-68e to 46a-68k, inclusive.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2016	46a-84(b)
Sec. 2	October 1, 2016	46a-84
Sec. 3	October 1, 2016	46a-55
Sec. 4	October 1, 2016	46a-68c

**JUD***Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

### ***OFA Fiscal Note***

#### ***State Impact:***

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 17 \$</b>	<b>FY 18 \$</b>
Human Rights & Opportunities, Com.	GF - Revenue Loss	Potential Minimal	Potential Minimal
Human Rights & Opportunities, Com.	GF - Revenue Gain	Potential Minimal	Potential Minimal

Note: GF=General Fund

***Municipal Impact:*** None

#### ***Explanation***

The bill alters various laws on discrimination complaints within the purview of the Commission on Human Rights and Opportunities (CHRO).

The bill requires the chief court administrator to designate judge trial referees (JTRs) to hear CHRO discrimination complaints, and allows CHRO to appoint JTRs when there is a specified backlog of complaints, both within available CHRO appropriations. To the extent that a backlog exists, there is a potential cost, which is not expected to be significant. The current daily rate for a JTR is \$251.

The bill also requires the court to order a respondent to pay CHRO its fees and costs, in addition to a civil penalty of up to \$10,000, under certain circumstances. This may result in a revenue gain.

#### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis****sSB 468*****AN ACT CONCERNING THE COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES.*****SUMMARY:**

This bill makes various changes affecting discrimination complaints and other matters within the jurisdiction of the Commission on Human Rights and Opportunities (CHRO).

Among other things, it:

1. sets an 18-month deadline for the presiding officer to render a final decision in discriminatory practice complaints that have proceeded to the public hearing phase, and allows CHRO and the parties to enforce this deadline in court;
2. requires the chief human rights referee to annually report to the Judiciary Committee on the number of cases that miss this deadline;
3. requires the chief court administrator to designate judge trial referees (JTRs) available to hear discriminatory practice complaints and certain other CHRO matters;
4. allows CHRO's executive director to appoint a JTR if there is a specified backlog of pending cases;
5. generally allows a party to a CHRO hearing to inspect documents not in that party's possession, and allows the presiding officer to impose nonmonetary penalties on noncompliant parties;
6. allows CHRO's executive director to assign commission legal



counsel to represent the state's interests in any proceeding in which civil or human rights are at issue;

7. allows the executive director, within available appropriations, to assign CHRO legal counsel to bring a civil action instead of an administrative hearing when doing so would be in the public interest; and
8. deems approved the affirmative action plans submitted by contractors for certain state, municipal, or quasi-public agency contracts, if the executive director fails to approve or disapprove the plan within 90 days of its submission.

EFFECTIVE DATE: October 1, 2016

## **§§ 1 & 2 – CHRO HEARINGS**

### ***Deadline for Decision After Hearing; Reporting to Judiciary Committee***

The bill sets a specific deadline for the resolution of discriminatory practice complaints that have proceeded to the public hearing stage of the process. This includes complaints of discrimination brought by an individual or CHRO against another person or entity.

By law, if a CHRO investigator finds reasonable cause to believe that discrimination occurred and fails to eliminate it, the investigator must certify the complaint and results of the investigation to the CHRO executive director and attorney general. The complaint then proceeds to the public hearing process. CHRO legal counsel can also send complaints directly to the hearing phase after early legal intervention (an optional step for complaints not resolved after mandatory mediation).

The bill requires the officer presiding over the hearing to issue a final decision no later than 18 months after the complaint was certified or sent directly to a hearing after early legal intervention, as applicable. It retains an existing provision requiring these hearings to comply with specified deadlines for contested cases under the Uniform

Administrative Procedure Act (UAPA). The UAPA requires agencies to render a final decision within 90 days after the close of evidence or due date for filing briefs, whichever is later.

The bill allows either party or CHRO (whether or not it is a party) to apply to Hartford Superior Court to request an order requiring the presiding officer to comply with (1) the bill's 18-month deadline and (2) the UAPA's 90-day deadline. After a hearing, the court must issue an appropriate order. These provisions on court enforcement of the 90-day deadline already apply under the UAPA.

The bill requires the chief human rights referee to report annually to the Judiciary Committee, with the first report due by January 1, 2017. She must report, for the prior fiscal year, on the number of:

1. final decisions that exceeded these deadlines and the reasons why and
2. complaints still pending that have exceeded these deadlines and the reasons why.

### ***Judge Trial Referees***

Under current law, the chief human rights referee must appoint human rights referees to preside over CHRO hearings on discriminatory practice complaints. She must also appoint another referee or a voluntary attorney to conduct settlement negotiations.

The bill provides an alternative process for judge trial referees (JTRs) to hear such complaints. It requires the chief court administrator to designate JTRs who must be available to act as presiding officers at any CHRO hearing or proceeding on:

1. a discriminatory practice complaint;
2. a complaint brought by CHRO against a contractor or subcontractor for (a) noncompliance with antidiscrimination laws or required contract provisions (e.g., affirmative action requirements) or (b) fraud related to qualifying as a minority

business enterprise, in relation to certain state, municipal, and quasi-public agency contracts; or

3. determining remedies following a default order against a respondent.

Under the bill, any such JTR (1) has the same powers and duties as a human rights referee appointed under law and (2) must be compensated at the rate set by existing law, from CHRO funds as available.

The bill also allows such JTRs to hear whistleblower complaints for alleged retaliation against employees of state or quasi-public agencies, large state contractors, or appointing authorities.

The bill allows the CHRO executive director, within available appropriations, to appoint such a JTR to preside at a settlement conference or to hear and issue a final decision on a complaint when there are more than 100 pending (1) discriminatory practice complaints at the public hearing stage or (2) whistleblower retaliation complaints. If she chooses to appoint a JTR for a discriminatory practice complaint, she must do so no later than 15 days after (1) a CHRO investigator certified the complaint or (2) CHRO legal counsel sent the complaint directly to a public hearing after early legal intervention.

Under the bill, if the executive director does not appoint a JTR to conduct a settlement conference, she may appoint a volunteer attorney (as authorized by existing law) to conduct settlement negotiations. If the executive director does neither, the chief human rights referee must appoint a (1) human rights referee to hear the complaint or (2) human rights referee or volunteer attorney to conduct a settlement conference.

### ***Document Inspection and Consequences of Noncompliance***

Under the bill, each party to a CHRO hearing must have the opportunity to inspect and copy relevant and material records, papers, and other documents not in the party's possession, unless other state

or federal law would prohibit this. The bill allows the presiding officer to (1) order a party to produce these documents and (2) issue a nonmonetary order against a party who fails to comply within 30 days.

The nonmonetary order must be deemed just and appropriate by the officer and may include the following:

1. finding that the matters that are the subject of the order are established as set forth in the other party's claim;
2. prohibiting the noncompliant party from introducing designated matters into evidence;
3. limiting that party's participation as to issues or facts relating to the order; or
4. drawing an adverse inference against that party.

### ***Cases Sent Directly to Hearing After Early Legal Intervention***

Under existing law, after a CHRO investigator certifies a discriminatory practice complaint, the hearing conference must occur within 45 days. The hearing is a de novo hearing on the merits and not an appeal of CHRO's processing of the complaint before its certification.

The bill specifies that the 45-day deadline and de novo requirements also apply to complaints sent directly to a public hearing by CHRO legal counsel after early legal intervention.

## **§ 3 – CHRO LEGAL COUNSEL**

### ***Authority to Represent State***

The bill allows CHRO's executive director, through the supervising attorney, to assign CHRO legal counsel to represent the state's interests in any suit or other proceeding in which civil or human rights are at issue. It allows CHRO legal counsel to intervene as a matter of right in any such suit or proceeding without permission from the parties, hearing officer, or court.

***Civil Action in the Public Interest***

The bill also allows the executive director, through the supervising attorney and within available appropriations, to assign CHRO legal counsel to bring a civil action instead of an administrative hearing for a (1) discriminatory practice complaint or (2) CHRO complaint brought against a contractor or subcontractor for noncompliance with antidiscrimination laws or required contract provisions. She may do so if she determines that this would be in the public interest.

The legal counsel must file the civil action within 90 days of notifying the parties of the executive director's determination. The civil action may be served by certified mail. The bill exempts such cases from specified laws setting conditions for civil actions after CHRO has released a case from its jurisdiction.

The bill provides that the court's jurisdiction is limited to the claims, counterclaims, defenses, or other matters that could be presented at a CHRO administrative hearing, had the complaint remained with CHRO. The bill allows the complaining party to intervene as a matter of right without permission from the court, CHRO, or the other party. The case must be tried without a jury.

Under the bill, if CHRO legal counsel determines that the state's interests will not be adversely affected, the complainant or his or her attorney must present all or part of the case in support of the complaint.

The bill allows a court to grant the same relief available in a civil action after a case was released from CHRO jurisdiction. If the court finds that a respondent committed a discriminatory practice, the bill requires the court to order the respondent to pay CHRO its fees and costs, in addition to a civil penalty of up to \$10,000. CHRO must use the funds from the penalty to advance the public interest in eliminating discrimination.

**§ 4 – AFFIRMATIVE ACTION PLANS**

Under existing law, the successful bidder for certain large state,

municipal, or quasi-public agency contracts must file with and obtain CHRO's approval for an affirmative action plan before the contract is awarded. If a contractor is not subject to this requirement, it still must file an affirmative action plan with CHRO if it (1) has 50 or more employees and (2) is awarded such a contract for more than \$50,000. (The plan does not need to be filed before the contract is awarded.)

For this latter type of contract, the bill shifts authority from the commission itself to the CHRO executive director or her designee for (1) approving the submitted affirmative action plans, including issuing a certificate of compliance, and (2) revoking such certificates from contractors who fail to implement the plan as required by law.

It also requires the executive director or her designee to review and formally approve, conditionally approve, or disapprove each such plan within 90 days of its submission. If this deadline is not met, the plan is deemed approved.

## **BACKGROUND**

### ***Judge Trial Referees***

By law, a judge or senior judge who reaches age 70 becomes a state referee for the remainder of his or her term and can be appointed as a state referee for subsequent terms. The chief justice can also appoint qualified members of the bar who are residents and electors of Connecticut as state referees. The chief justice can designate a state referee as a judge trial referee. A judge trial referee can hear criminal and civil cases and juvenile matters on referral from the Superior Court (CGS §§ 51-501, 52-434).

## **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 43 Nay 0 (03/28/2016)